

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL PETITION (L) NO.192 OF 2007
ARBITRATION

Vama Apparels (India) Pvt.Ltd

..Petitioners

vs

Juniper Hotels Pvt Ltd ..

Respondents

Mr.J.P.Sen
Baredia
Mr.Chirag
Respondents

i/b
Balsara

a/w
Thakore

i/b

Mr.H.N.Thakore
Jariwala &
M/s.Khaitan

and
Asso.for
& Co

Ms.Agnes
Petitioner
for

CORAM

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ANOOP

V.MOHTA,

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RESERVED
PRONOUNCED

ON:
ON:

30th
4th

April,
May,

2007
2007

P.C.

1. The petitioner has invoked section 9 of the Arbitration and Conciliation Act, 1996 (for short Arbitration Act, 1996) as there arose disputes between the parties arising out of agreement dated 24th August, 2005.

2. In Arbitration Petition (Lodging) No.556 of 2006, between the parties this Court by an order dated 10th October, 2006 refused to grant ad interim order/injunction and in the result the respondents took possession of the premises wherein the petitioner was conducting the business based on the agreement.

3. Admittedly, various articles/goods have been lying inside the premises. The respondents

therefore are in possession of those goods. The petitioners therefore, averred in the present petition that third party goods have also been taken possession of as per the inventory of stocks Exhibit E of the respondents. The action of the respondents therefore, to retain the goods of the petitioner and as also the third parties is illegal. The petitioner therefore prayed for mandatory order directing the respondents to hand over the entire stocks retained by the respondents as per Exhibit E, F1 and F2.

4. In view of the averments made in the petition and specifically the submissions as the respondents though served was not appeared following order came to be passed.

5. " In view of the urgency as referred in the petition in paragraphs 16 to 22, I am inclined to grant ad-interim relief in terms of prayer clause

(e) which reads thus:

(e) that pending the hearing and final disposal of the petition and until such time that Arbitration proceedings are commenced and until such time that an Award is passed and the Award becomes enforceable as a Decree of this Hon'ble Court, this Hon'ble Court be pleased to pass an order of injunction restraining the respondents by themselves, their agents, servants, representative (s) or person (s) claiming through or under them from in any manner dealing with, selling, disposing of, alienating, encumbering, creating any third party rights on the stocks as illegally detained by the respondents as per inventory of stock Exhibit E hereto.

. Notice returnable within two weeks.

6. Learned counsel appearing for the respondents though that there was no proper service before moving this petition yet, considering the disputed questions of facts about sending and receipt of fax of intimation of the matter, submitted that the matter may please be heard on merits instead of those objections.

7. The Memorandum of Understanding (MOU) signed between the petitioner and the respondents on 15th October, 2003 permitted the petitioner to carry on the business from the respondent's premises. Disputes arose between the parties. Various correspondences exchanged from 24th August, 2005 onwards. The respondents terminated the agreement on 25th September, 2006. As respondents threatened to remove the petitioner out of the premises, an Arbitration Petition was filed on 13th August, 2000 which was dismissed. The goods of the petitioner including of the third party have been detained by the petitioners.

8. Admittedly, based on the agreement between the parties the respondents have already taken possession of the property. The security amounting to the tune of Rs. 50 lacs are still lying with the respondents. The Arbitral Tribunal will adjudicate the monetary claim between the parties.

The goods are still in possession of the respondents. Therefore, at this stage, pending adjudication by the Arbitral Tribunal, I am of the view that the petitioners are entitled for ad interim relief as prayed in terms of prayer clause (e). The respondents are at the most entitled to retain possession of the goods in view of clause of "lien over the property". But, they are not at this stage entitled to dispose of the said property. The respondents are also subject to interpretation of the clauses and/or even otherwise entitled for monetary consideration in view of the breaches committed by the petitioner. At this stage, without going further into the merits of the matter, even the submissions of the learned counsel appearing for the respondents that they are entitled to sell those properties as per the agreement cannot be accepted. The Arbitral Tribunal will consider all the issues raised by the parties including proper interpretation and rights of the parties. The effect of termination as per agreement need to be interpreted and considered by the tribunal which includes the respondents's right to have first charge and/or lien on products and/or to sell all those properties for recovering the damages so claimed. In these background and in view of the rival contentions as raised, I am not inclined to pass ad interim order of mandatory injunction as prayed by the petitioners. There is no case out made out by the petitioners for such

mandatory injunction for releasing the goods as claimed. Whether the goods belongs to third party or not cannot be adjudicated at this stage of the proceeding though there are inventories made to reflect the same. The respondents are not admitting the same. The respondents even otherwise submitted that they have right/charge/lien on the stocks lying in the premises as per the agreement itself. Therefore, unless the parties agree to furnish respective securities or able to secure the amount of damages at this stage, I am not inclined to grant any mandatory order to release the said property. However, the respondents are also as observed above, not entitled to sell or dispose of the said property till adjudication of the rival claims by the Arbitral Tribunal.

9. Considering the fact that goods are perishable in nature as contended it is in the interest of parties that they should agree to commence arbitration proceedings as settled as early as possible. Liberty is granted to the parties to take out appropriate proceedings before the tribunal.

10. Taking all these into account, the petition is partly allowed in terms of prayer clause (e). Other prayers are rejected. This order will be continued for fourweeks even after constitution of the tribunal. The petitioners and/or parties are

at liberty to take out appropriate proceedings
before the constituted tribunal if any.

11. Petition is therefore, accordingly disposed
of. No order as to costs.

(Anoop V.Mohta, J)